

North Carolina Auctioneer Licensing Board Newsletter

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108 Ber Creek Drive
Fuquay Varina, NC 27526
Phone: (919)-567-2844
Fax: (919) 567-2865
www.ncalb.org
Email: info@ncalb.org

Board Members

- Randy B. Lee, Chairperson
- William B. Lilly, Vice Chairperson
- Clegg Grady, Board Member

NCALB Staff

- Teresa L. Watson, Executive Director
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- Garris Neil Yarborough, Legal Counsel to Board

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Chairperson Corner

Being recently elected to the position of Chairperson of the North Carolina Auctioneers Commission (NCAC), I would like to begin by saying that I look forward to serving the general public of this great state and those of other states that utilize our profession to conduct business in North Carolina.

Each member serving on the commission and the Executive staff for the NCAC has the attitude and dedication to conduct business in a manner to promote and enhance our profession while upholding regulatory requirements that govern the auctioneering profession.

The NCAC has a defined role in serving the general public in North Carolina. The following is a brief description of the Auctioneers Commission stated in literature prepared by the Office of Boards and Commissions.

“The commission protects the public from incompetent or unqualified persons engaging in auctioneering activities. They are charged with preventing deceitful practices, willful misrepresentation and dishonest dealings by auctioneers in the state.”

The statement above indicates that serving on the NCAC is a very important role and that each member of the commission has a sworn duty to enforce regulatory requirements stated in the NC General Statutes and the NC Administrative Rules. Each month the board has to review and/or act on complaints against auctioneers or auction firms from clients, or bidders with accusations of their failure to follow the law and rules. Whether the complaints are real or perceived, there were usually actions that could have been taken by the auctioneer on the front end that would have prevented a complaint being made, thus, reducing negative public opinion of our profession.

Our clients, potential bidders and buyers expect professionalism. And with professionalism one expects: high ethical standards and thoroughness in following the laws and rules put in place to protect them as members of the public.

The Continuing Education requirements were developed to ensure that each licensed auctioneer or auction firm operating in the state of North Carolina maintain a required level of knowledge related to our profession. Currently, the Commission is requiring four hours of CE credits. While the four hours does not require any review of the laws and rules, I encourage each of you to review and gain a thorough understanding of the Auctioneering Laws and Rules. A current copy can be obtained by visiting the website: NCALB.org. If you do not understand any law or rule, please contact the NCAC administrative staff, they will be glad to assist you. Please don't wait until you have to answer to a complaint to determine if you were in compliance.

Please remember; all of the NCAC monthly board meetings are open to the public and each of you is invited to attend.

Proudly serving,

Randy B. Lee, Chairperson

NC Auctioneers Commission

Board Meeting Dates	Deadline Dates (Firm/Reciprocal)	Deadline Dates (Exam)
November 14, 2011	November 3, 2011	October 20, 2011
December 12, 2011	December 1, 2011	November 17, 2011

License Statistics:	Exam Statistics:	Passing rate percentage
Auctioneer License	1990	July 2011
Apprentice Auctioneer License	14	August 2011
Firm License	437	September 2011
		October 2011
		• Laws and Rules are most commonly missed on the exam.

FYI:

- All licensees must notify the Board in writing of each change or addition of residence or business address, including mailing address within 10 days of the occurrence. Refer to NCAC 21 4B .0601 of the Rules and Regulations. This is acceptable by regular mail, fax, or email to info@ncalb.org.
- All licensees must notify the Board in writing of each change of trade name, assumed name, or combination of names under which the licensee conducts business related to auctions within 10 days of the occurrence. Refer to NCAC 21 4B .0601 of the Rules and Regulations. This is acceptable by regular mail, fax, or email to info@ncalb.org.
- If a complaint is filed against you, it is your duty to respond to the Board. Ref to 85B-8(a)(10).

Practice Tips

Garris Neil Yarborough, Legal Counsel for the Board

Very rarely does the NCALB receive complaints about large item auctioneer related transactions. I believe this is due, in part, to everyone involved being more particular about the paperwork and the handling of money. However, a large portion of our complaints come from sellers who believe their 10 pieces of household furniture are antiques and their two boxes of knickknacks are objet d'art (and to them, they may be). Therefore, it is particularly important to the Auctioneer who wants to avoid lawsuits and complaints to the Licensing Board to keep all of the required paperwork and obtain all the appropriate signatures and approvals even in small transactions.

Although this practice tip may not be necessary for many of you, the auctioneer practice I would like to address in this issue relates to habit of some auctioneers that after the day of the sale, but within thirty days, mailing two copies of a settlement statement to a client, along with their check, with a request to review and sign the settlement statement and to mail it back to the auctioneer (sometimes with a self-addressed stamped envelope enclosed). This may be a convenient way of handling your legal obligations under N.C. Gen. Stat. §85B-7.1(a), but it is a risky one.

As you know, N.C. Gen. Stat. §85B-7.1(a) requires all auctioneers to have "all settlement statements . . . signed by the licensee or the licensee's agent and by the person receiving the disbursement." This statutory requirement not only protects the public, but it may also protect the auctioneers from "after the fact" complaints about sale prices, commission percentages, additional costs charged, etc. Furthermore, if a complaint is filed against you regarding a dispute on a sale, one of the first items requested by the investigator will be a copy of the signed settlement statement and failure to produce one is a violation in and of itself (regardless of the merit of the original complaint).

As a practical matter, if the seller is going to dispute your services or the money split, you need to know this as soon as possible (before the dispute becomes a legal controversy). Therefore, my suggestion to auctioneers is if you are not going to have a face-to-face exchange of the signed settlement statement and the proceeds check, to write a letter to your seller that goes like this:

"Enclosed you will find two copies of your settlement statements reflecting the accounting for the sale you hired me to conduct and a copy of my escrow account check to you in the amount of \$XYZ.00 which are your net proceeds as reflected in the settlement statement. Please review the settlement statement and if it is correct, sign one of them and mail it back to me in the enclosed self-addressed stamped envelope and I will immediately mail you your check."

Obviously, me being a lawyer and all, that sounds a little legalistic and you may want to adapt it to your style of communication, but words to that effect, along with this practice, will help prevent a complaint to the NCALB and perhaps a lawsuit by your client against you. To send the actual check with the settlement statement sets you up for at least two problems: 1) A well-intentioned seller who, after they receive their check, may develop little interest in doing anything further related to the sale to assist you, or 2) A less well-intentioned seller who may take your check, cash it and then complain about the transaction. In either of those two events, if the NCALB learns of your failure to comply with N.C. Gen. Stat. §85B-7.1(a), you may be subject to some form of license discipline. Of course, if litigation arises, having a cancelled check may help you, but it is not as good as having a cancelled check and a signed settlement statement.

In assessing this course of action, you may consider the effect of N.C. Gen. Stat. §85B-8(3) on it. N.C. Gen. Stat. §85B-8(3) requires auctioneers "to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale." It is my position that sending the settlement statement within that 30 day period complies with the "account for" compliance alternative to that statute. Obviously, the quicker you can begin this process, the smoother it will go.

In the event there is a dispute as to the split of the proceeds, you are authorized, according to Section .0603(f) of the North Carolina Auctioneer Licensing Board Regulations, to hold the money until it can be resolved. Section .0603(f) reads as follows: "In the event of a dispute between the seller and buyer of goods or property or between the licensee and any person in whose name trust or escrow funds are held, the licensee shall retain said monies in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction."

Complying with this law in that event would mean you would not disburse to the seller, nor would you disburse your commission to yourself or others involved in the transaction that may be due money. This may seem to be inconvenient, but it is much less awkward than handling a NCALB complaint or chasing down disbursed money after a judgment is entered against you.

Please accept this tip in the manner in which it is provided to you: a tip designed to help you have a more worry-free auctioneer practice.